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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/080,872	02/22/2002	Loren J. Veltrop	00-176-D	2509

7590 06/30/2004

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EXAMINER

BECKER, DREW E

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 06/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/080,872	VELTROP, LOREN J.	
	Examiner	Art Unit	
	Drew E Becker	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 70-76 and 78-84 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 70-76, 78 and 79 is/are rejected.
- 7) ☒ Claim(s) 80-84 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6-7-04</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Request for Continued Examination

1. The request filed on June 7, 2004 for an RCE based on parent Application No. 10/080,872 is acceptable and an RCE has been established. An action on the RCE follows.

Information Disclosure Statement

2. The information disclosure statement filed June 7, 2004 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered. Specifically, there was no copy of the "Thermodyne" reference.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 70-76 and 78 are rejected under 35 U.S.C. 102(e) as being anticipated by Shei et al [Pat. No. 6,262,394].

Shei et al teach a method of warming cooked food (abstract) by placing it in a tray with a lip (Figure 1, B), inserting the tray into a receiving space of a freestanding cover with a flat flange section and a lower support section (Figure 1, #80), a warming apparatus with heated compartments (Figure 1, #4 & 48), the flange blocking the tray opening by being flush with the lip (Figure 3, left side), front and rear openings for inserting and removing the trays and covers (Figure 1-2, #36; column 6, line 42 to column 7, line 41), and a shelf which supports the cover (Figure 3, #70).

5. Claims 70-76 and 78 are rejected under 35 U.S.C. 102(b) as being anticipated by Oda et al [Pat. No. 5,028,761].

Oda et al teach a method of warming cooked food (abstract) by placing it in a tray with a lip (Figure 5, #12), inserting the tray into a receiving space of a freestanding cover with a flat flange section and a lower support section (Figure 5, #13-15), a warming apparatus with heated compartments (Figure 1, #1), the flange blocking the tray opening by being flush with the lip (Figure 5, #14), front and rear openings for inserting and removing the trays and covers (Figure 1, #2), and a shelf which supports the cover (Figure 6, #91-92).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 79 is rejected under 35 U.S.C. 103(a) as being unpatentable over Oda et al in view of Robards et al [pat. No. 5,900,173]

Oda et al teach the above mentioned concepts. Oda et al do not teach the cover contacting the compartment upper surface. Robards et al teach a method of warming cooked foods by use of tray which is pressed against the upper surface of the compartment (Figure 3, #48). It would have been obvious to one of ordinary skill in the art to incorporate the upper surface contact of Robards et al into the invention of Oda et al since both are directed to methods of warming cooked foods, since Oda et al already included a cover which sealed off tray opening (Figure 5, #12-13), and since the upper surface contact of Robards et al would have prevented the cover of Oda et al from lifting up due to pressure and thus releasing moisture from the tray.

Allowable Subject Matter

8. Claims 80-84 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. The following is a statement of reasons for the indication of allowable subject matter: dependent claim 80 defines over the prior art of record since the prior art does not teach, suggest, nor render obvious the cover having a front retainer which engages the shelf.

Response to Arguments

10. Applicant's arguments filed June 7, 2004 have been fully considered but they are not persuasive.

Applicant argues that Shei et al do not teach a "support section substantially defining said receiving space". However, Shei et al clearly disclose a cover including a lower support section defining a receiving space (Figure 1, #82). In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the receiving space enclosing the entire tray) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant appears to argue that the cover should be placed in the compartment, and next the tray should be inserted into the cover which was already within the compartment. However, this concept is not present in the claims. Claim 70 merely requires that the tray be placed under the cover, and that at some point in time, the cover should be present within the compartment. It is suggested that applicant consider inserting language such as "followed by the step of..." or "first...; second...".


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-

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1396. The examiner can normally be reached on Mon.-Thur. 8am-5pm and every other Fri. 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Drew E Becker
Primary Examiner
Art Unit 1761
